



FEB 23 1990

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2405ENVIRONMENTAL PROTECTION
AGENCY

FEB 27 1990

Ref: 8RC

MONTANA OFFICE

CERTIFIED MAIL
RETURN RECEIPT REQUESTEDSPECIAL NOTICE LETTER FOR
REMEDIAL DESIGN/REMEDIAL ACTION
AND DEMAND FOR PAYMENTURGENT LEGAL MATTER -- PROMPT REPLY NECESSARY

Robert L. Dent
Manager, Western Minerals Projects
Anaconda Minerals Company
555 Seventeenth Street
Denver, Colorado 80202

Site East Helena
File # 104.04.00
Confidential: Yes ☐ No ☒
Admin. Record: Yes ☒ No ☐
Key Words/Comments: Special notice
to ARCO Coal Co. for Process
Ponds RD/RA
copy to Kathy C.

Re: Anaconda Minerals Company
Potentially Responsible Party
East Helena Smelter Site
East Helena, Montana

Dear Mr. Dent:

The United States Environmental Protection Agency (EPA) hereby issues this Special Notice and Demand for Payment to Anaconda Minerals Company ("Anaconda") in connection with the East Helena Smelter Site (the "Site") referenced above. This letter has been sent to your attention as the representative or agent for Anaconda. EPA is taking the actions described herein pursuant to its authorities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("CERCLA").

This letter serves three basic functions. First, it contains a formal demand for reimbursement of costs that have been incurred by EPA, including interest thereon, and that are expected to be incurred, which are subject to interest, in response to the health and environmental concerns at the Site. Second, this letter notifies you that a 60-day period of formal negotiations with the EPA automatically begins three days following the date of this letter. Third, this letter provides general and site-specific information to assist you in these negotiations.

NOTICE OF POTENTIAL LIABILITY

EPA has information indicating that Anaconda may be a potentially responsible party ("PRP") as defined in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to this Site.

In accordance with CERCLA, EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions include, but are not necessarily limited to, field sampling and analysis, review of data and documents, and oversight activities pertinent to the Site. In accordance with section 107(a) of CERCLA, you are hereby notified that you may be liable for these past response costs plus all future response costs as well as any and all interest recoverable under section 107 or under any other provisions of law.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the section 122(e) special notice procedures specified in CERCLA will facilitate a settlement between EPA and the PRPs for this Site. Pursuant to section 122 of CERCLA, 42 U.S.C. § 9622, this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day period, the PRPs, including Anaconda, are invited to participate in formal negotiations with EPA. You are also encouraged to negotiate voluntarily a settlement providing for the PRPs to conduct the response activities required for the first operable unit at the Site. This negotiation period ends 63 days from the date of this letter. The 60-day negotiation moratorium will be extended for an additional 60 days if EPA determines that the PRPs have provided EPA with a good faith offer to conduct or finance the necessary remedial design/remedial action (RD/RA) and to reimburse EPA for response costs incurred at the Site. In that event, the negotiation moratorium will conclude 120 days from this letter. If settlement is reached between EPA and the PRPs within the 60-day or the 120-day negotiation moratorium periods, the settlement will be embodied in an RD/RA consent decree.

FUTURE RESPONSE ACTIONS

Certain response actions related to RD/RA are planned for the Site. A copy of EPA's Record of Decision (ROD), draft consent decree and scope of work (SOW) are attached to this letter. These are provided to assist you and the other PRP in developing a good faith offer for conducting the RD/RA. EPA reserves the right to modify the draft consent decree.

GOOD FAITH OFFER

As indicated above, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if the PRPs submit a good faith offer to EPA. A good faith offer to conduct the RD/RA is a detailed written proposal that demonstrates the PRPs' qualifications and willingness to conduct the design, implementation, and monitoring of the remedies presented in the ROD. In order for your proposal to be considered a good faith offer, it must not be significantly different from the ROD and consent decree attached hereto. The good faith offer must include a work plan containing a detailed description of how the PRPs will implement the scope of work (SOW) also attached to this letter.

The ROD provides for selected remedies addressing the process ponds fluids and sediments contamination at the Site. The ROD also identifies a contingency remedy to be implemented if EPA determines, based on results of the in situ treatability tests required under the selected remedy, that groundwater cleanup will not meet specified cleanup standards. The good faith offer must demonstrate an ability and willingness to implement both the selected as well as the contingency remedy.

It should be noted that the attached consent decree does not contain language providing Anaconda with a covenant not to sue. If you wish to discuss the possibility of including such language in the final consent decree, your good faith offer must include a rationale addressing the factors set forth in sections 122(f)(1) and (4) of CERCLA, 42 U.S.C. §§ 9622(f)(1) and (4). EPA anticipates that your response will form the basis for a determination of whether such a covenant is appropriate.

The good faith offer must at a minimum include the following elements:

1. A statement of willingness by the PRPs to conduct RD/RA which is consistent with the attached ROD, draft consent decree and SOW, and which provides a sufficient basis for further negotiations.
2. A paragraph-by-paragraph response to the attached consent decree and SOW.
3. A Work Plan to implement the attached SOW.
4. A demonstration of the PRPs' technical capability to carry out the RD/RA including the identification of the firm(s) that may actually conduct the work or a description of the process the PRPs will use to select such firm(s).

5. A demonstration of the PRPs' capability to finance the RD/RA.
6. A statement of willingness by the PRPs to reimburse EPA for past response costs and costs which may be incurred in overseeing the PRPs' conduct of the RD/RA.
7. The name, address, and phone number of the person, if any, who will represent you in negotiations.
8. A description of the PRPs' position on releases from liability and reopeners to liability.

INFORMATION RELEASE

Pursuant to section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA is providing the following information as an attachment to this letter:

1. A list of names and addresses of PRPs to whom this notification is being sent. Inclusion on, or exclusion from, the attached list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site.

2. A list of the volume and nature of substances contributed by each listed PRP, based on information presently available to EPA.

3. A ranking by volume of the substances at the facility, based on information presently available to EPA.

DEMAND FOR PAYMENT

EPA hereby formally demands that Anaconda reimburse the United States for all costs incurred in connection with response actions at the Site.

As indicated above, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site, pursuant to EPA authorities under CERCLA. These response actions include, but are not limited to oversight and other activities related to development of the Remedial Investigation/Feasibility Study for the Site. The costs incurred through January 1, 1989, through EPA funding in connection with the Site are approximately \$2,533,902.42. In accordance with section 107(a) of CERCLA, demand is hereby made for payment of the above amounts plus any and all interest recoverable under section 107 or under any other provisions of law.

As indicated above, EPA anticipates further expenditures of public funds to oversee the required RD/RA at the Site. Whether EPA funds the entire RD/RA, or simply incurs costs by overseeing conduct of the RD/RA by the PRPs, you are potentially liable for these expenditures plus interest, as provided in section 107 of CERCLA.

ADMINISTRATIVE RECORD

Pursuant to section 113(k) of CERCLA, EPA has established an Administrative Record file containing documents forming the basis for EPA's decision on the selection of a response action for the Site. This Administrative Record is available to the PRPs and to the public for inspection, during the hours specified, at the following location:

U.S. EPA, Montana Office
Federal Building
301 South Park, Drawer 10096
Helena, Montana 59626
(406) 449-5414
Hours: Mon.-Fri. 8 a.m.- 4 p.m.

PRP RESPONSE AND EPA CONTACT PERSON

In advance of submission of any good faith offer for RD/RA, you are encouraged to notify EPA in writing, within fourteen (14) calendar days from receipt of this letter, of your willingness to negotiate the performance of the RD/RA. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site and that you have declined any involvement in performing the RD/RA response activities described herein. You may be liable under section 107 of CERCLA for any and all costs of the response activities EPA performs at the Site, as well as for any damages to natural resources.

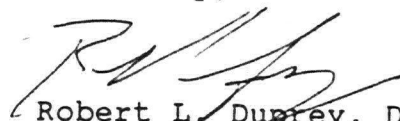
Your response to this notice letter should be sent to:

D. Scott Brown
Remedial Project Manager
U.S. Environmental Protection Agency
301 South Park, Drawer 10096
Helena, Montana 59626

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein. If you have any

questions pertaining to the Notice and Demand for Payment presented in this letter, please direct them to Sandra R. Moreno, Office of Regional Counsel, EPA Region VIII, Denver, Colorado 80202, at 303-294-1458. Any questions relating to technical aspects of RD/RA performance should be directed to D. Scott Brown at the location provided above.

Sincerely,



Robert L. Duprey, Director
Hazardous Waste Management Division

Attachments

cc: Sandra R. Moreno, EPA, 8RC
D. Scott Brown, EPA, 8MO
Nancy Mangone, EPA-HQ, LE-134S
Brad Wright, OS-510
Michael Goodstein, DOJ
Robert F. Stewart, DOI
Thomas Eggert, MDHES
Greg Mullen, MDHES
Roger Thorvilson, MDHES
John J. Drynan, MDHES
K. L. Cool, MFW&P
Dennis Hemmer, Montana State Lands
Arthur R. Zaegel, BN

ATTACHMENT A

1. The following is a list of the names and addresses of representatives of the potentially responsible parties (PRPs) identified to date for the East Helena Smelter Site:

Robert L. Dent
Manager, Western Minerals Projects
Anaconda Minerals Company
555 Seventeenth Street
Denver, Colorado 80202

Mr. Jon C. Nickel
Industrial Quality Manager
ASARCO Incorporated
Box 1230
East Helena, MT 59635

*American Chemet
Dan Brimhall, Manager
East Helena, MT 59635

*Burlington Northern
Dave Seep
176 E. 5th St.
P.O. Box 64960
St. Paul, Minn 55164-0960

2. The following is a summary of, based on presently available information, the nature and volume of substances contributed by each PRP at the Site:

- Substances contributed by East Helena Smelter Site
PRPs: Soils, ground water and surface water
contaminated by metals and arsenic.

Note: The foregoing information is preliminary in nature and may be subject to change.

*These parties are not receiving special notice letters for articpation in this Operable Unit but are receiving a demand letter for payment of past costs.